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Attorneys for Third Party Defendants/Fourth Party Plaintiffs
Albert H. Birchwale, Esq., and Basile, Birchwale & Pellino, LLP

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Civil Action No: 07-CV-3843-
 : (FSH) (PS)

Plaintiffs, :

vs. :

ARTHUR RICHARD HARTMAN, JR., :
Individually and as Executor of :
the Estate of Mario Schettino, :
JOSEPH SCHETTINO, LILLIAN :
SCHETTINO, JOHN JHANG, EUI JA :
JHANG and EMIGRANT FUNDING :
CORPORATION, :

REQUEST TO ENTER DEFAULT OF
THIRD-PARTY DEFENDANT DANTON
PROPERTIES, L.L.C. PURSUANT TO
FRCP 55(a)

Defendants. :

JOHN JHANG and EUI JA JHANG, :

Third-Party Plaintiffs, :

vs. :

ALBERT H. BIRCHWALE, ESQ., :
BASILE, BIRCHWALE & PELLINO, :
LLP, DANTON PROPERTIES, L.L.C., :
JOHN DOES 1 THROUGH 5 :
(fictitious names) and ABC :
CORPORATIONS 1 THROUGH 5 :
(fictitious names) :

Third-Party Defendants. :

ALBERT H. BIRCHWALE, ESQ. and :
BASILE, BIRCHWALE & PELLINO, :
LLP :

Fourth-Party Plaintiffs, :

vs. :

VESTED TITLE, INC. and CHICAGO
TITLE INSURANCE COMPANY, :

Fourth-Party Defendants. :

TO: THE CLERK OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Third-Party Defendants, Albert H. Birchwale, Esq. and Basile, Birchwale & Pellino, LLP, by their undersigned counsel, Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, request that the Clerk of this Court enter the default of third-party defendant Danton Properties, L.L.C., for failure to plead or otherwise defend in a timely manner, as provided by Rule 55(a) of the Federal Rules of Civil Procedure.

This request is based on the attached document of John P. O'Toole, Esq., which shows:

1. Third-party Defendant Danton Properties, L.L.C. ("Danton") was served with the Third-Party Summons and Answer, Affirmative Defenses, Crossclaims and Demand for Jury Trial on Behalf of Third-Party Defendants Albert H. Birchwale, Esq., and Basile, Birchwale & Pellino, LLP. (collectively, the "Third-Party Summons and Crossclaim") on April 8, 2009.

2. The Return of Service filed with this Court on April 30, 2009 establishes that service was proper pursuant to Rule 4

of the Federal Rules of Civil Procedure. A true copy of the Return of Service is attached to the O'Toole Declaration as Exhibit A.

3. Danton has failed to serve and file an answer or otherwise respond to the Third-Party Crossclaim.

4. The applicable time limit for responding has expired.

5. Danton is not an infant or incompetent person.

6. Danton is not in military service.

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP
Attorneys for Third Party Defendants/Fourth Party
Plaintiffs Albert H. Birchwale, Esq., and Basile,
Birchwale & Pellino, LLP.

By: _____


John P. O'Toole

Dated: April 30, 2009

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing and the Declaration of counsel in support thereof were filed electronically with the United States District Court for the District of New Jersey on this 30th day of April, 2009, with notice of case activity generated and sent electronically and via regular mail to:

Jan M. Geht, Esq.
U.S. Department of Justice, Tax Division
P.O. Box 227
Washington, DC 20044
Attorneys for Plaintiff

Jaimee Katz Sussner, Esq.
Herrick, Feinstein, LLP
One Gateway Center, 22nd Fl.
Newark, NJ 07102
*Attorneys for Defendants/Cross-Claimants
John Jhang and Eui Ja Jhang*

Thomas F. Dilullo
123 Clarendon Place
Hackensack, NJ 07601
Attorney for Defendant Arthur Richard Hartman, Jr.

Michael D. Malloy
Finestein & Malloy, LLC
26 Main Street
Chatham, NJ 07928
*Attorneys for Fourth Party Defendants Chicago
Title Insurance Co. and Vested Title Inc.*

On April 30, 2009, a copy of the foregoing was also mailed via regular mail to Third-Party Defendant Danton Properties, L.L.C., 7822 Bergenline Avenue, North Bergen, New Jersey, 07047.

By: _____



John P. O'Toole

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Civil Action No: 07-CV-3843-
(FSH) (PS)

Plaintiffs, :

vs. :

ARTHUR RICHARD HARTMAN, JR., :
Individually and as Executor of : DECLARATION OF JOHN P. O'TOOLE
the Estate of Mario Schettino, : IN SUPPORT OF REQUEST TO ENTER
JOSEPH SCHETTINO, LILLIAN : DEFAULT OF THIRD-PARTY
SCHETTINO, JOHN JHANG, EUI JA : DEFENDANT DANTON PROPERTIES,
JHANG and EMIGRANT FUNDING : L.L.C. PURSUANT TO FRCP 55(a)
CORPORATION, :

Defendants. :

JOHN JHANG and EUI JA JHANG, :

Third-Party Plaintiffs, :

vs. :

ALBERT H. BIRCHWALE, ESQ., :
BASILE, BIRCHWALE & PELLINO, :
LLP, DANTON PROPERTIES, L.L.C., :
JOHN DOES 1 THROUGH 5 :
(fictitious names) and ABC :
CORPORATIONS 1 THROUGH 5 :
(fictitious names) :

Third-Party Defendants. :

ALBERT H. BIRCHWALE, ESQ. and :
BASILE, BIRCHWALE & PELLINO, :

LLP :
Fourth-Party Plaintiffs, :
vs. :
VESTED TITLE, INC. and CHICAGO :
TITLE INSURANCE COMPANY, :
Fourth-Party Defendants. :

JOHN P. O'TOOLE hereby declares, pursuant to 28 U.S.C. §1746,
as follows:

1. I am an attorney with the law firm of Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, counsel for Third-Party Defendants Albert H. Birchwale, Esq. and Basile, Birchwale & Pellino in connection with the above-captioned action, and as such, I am familiar with the facts stated herein.

2. This office delivered the Third-Party Summons and Answer, Affirmative Defenses, Crossclaim and Demand for Jury Trial on Behalf of Albert H. Birchwale, Esq. and Basile, Birchwale & Pellino (collectively, the "Third-Party Summons and Crossclaim") to Guaranteed Subpoena for service upon Third-Party Defendant Danton Properties, L.L.C. ("Danton"). Mark Sacripanti of Guaranteed Subpoena properly served the Third-Party Summons and Crossclaim on April 8, 2009 under the provisions of Rule 4 of the Federal Rules of Civil Procedure. Mr. Sacripanti declared that fact by a notarized Return of Service.

3. The notarized Return of Service was filed with the Court on April 30, 2009 and is attached as Exhibit A.

4. Danton has failed to serve and file an answer or otherwise respond to the third-Party Crossclaim.

5. Under Rule 12(a)(1)(A)(i) of the Federal Rules of Civil Procedure, the time limit for Danton to respond to the Third-Party Complaint has now expired, and the time for Danton has not been extended by any stipulation of the parties or any order of the Court.

6. Danton could not be an infant or incompetent person within the meaning of Rule 55(a) of the Federal Rules of Civil Procedure because, upon information and belief, it is a New Jersey limited liability company with its principal place of business in the County of Hudson, State of New Jersey.

7. Danton is not in military service.

I declare under penalty of perjury that the foregoing is true and correct.

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP
Attorneys for Third Party Defendants/Fourth Party
Plaintiffs Albert H. Birchwale, Esq., and Basile,
Birchwale & Pellino, LLP

By: 

John B. O'Toole

Dated: April 30, 2009

EXHIBIT A



AO 440 (Rev. 10/93) Summons in a Civil Action

RETURN OF SERVICE

SERVICE OF: **SUMMONS, ANSWER, FILED CROSSCLAIMS**
EFFECTED (1) BY ME: **MARK SACRIPANTI**
TITLE: **PROCESS SERVER**

DATE: 04/08/2009 03:00PM

CHECK ONE BOX BELOW TO INDICATE APPROPRIATE METHOD OF SERVICE:

☐ Served personally upon the defendant:

DANTON PROPERTIES

Place where served:

C/O ANTHONY IEFELICE 7822 BERGENLINE AVE. NORTH BERGEN NJ 07047

☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left:

DANTON PROPERTIES/ MARIE MUNOZ

Relationship to defendant: **MANAGING AGENT**

Description of person accepting service:

SEX: **F** AGE: **36-50** HEIGHT: **5'4"-5'8"** WEIGHT: **131-160 LBS.** SKIN: **WHITE** HAIR: **BROWN** OTHER: _____

☒ To the best of my knowledge, said person was not engaged in the U.S. Military at the time of service

STATEMENT OF SERVER

TRAVEL \$ _____

SERVICES \$ _____

TOTAL \$ _____

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in this Return of Service and Statement of Server is true and correct.

DATE: **04 / 08 / 20 09**

L.S.

SIGNATURE OF MARK SACRIPANTI
GUARANTEED SUBPOENA SERVICE, INC.
2009 MORRIS AVENUE
UNION, NJ 07083

04-08-09
J. SULLIVAN
JANIRA SANTIAGO VELEZ
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires April 24, 2012

ATTORNEY: **JOHN P. O'TOOLE, ESQ.**
PLAINTIFF: **UNITED STATES OF AMERICA**
DEFENDANT: **ARTHUR RICHARD HARTMAN, JR., ET AL.**
VENUE: **DISTRICT OF NJ**
DOCKET: **07 CV 3843 FSH PS**

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

NR